

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

COACH, INC. and
COACH SERVICES, INC.,

Plaintiffs,

v.

CASE NO. 12-14920
HONORABLE GEORGE CARAM STEEH

SAMTAN LLC, d/b/a XCLUSIVE TAN,
et al,

Defendants.

**ORDER DENYING PLAINTIFFS' MOTION TO STRIKE (Doc. 41), and
GRANTING LEECE DEFENDANTS' MOTION FOR LEAVE
TO FILE CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT (Doc. 37)**

This trademark and copyright infringement arises out of the sale of alleged knockoff Coach purses, wallets, and sunglasses sold at defendant tanning salons. On January 6, 2014, the dispositive motion cut-off date, plaintiffs Coach, Inc. and Coach Services, Inc. (collectively "Coach") filed a motion for summary judgment as to liability only as to defendant Samtan LLC ("Samtan") and its owner, defendant Marc Petrusha (collectively "Petrusha defendants"), for trademark counterfeiting (Count I), trademark infringement (Count II) and copyright infringement (Count VI). On February 4, 2014, nearly a month after the dispositive motion cut-off date had expired, defendants Troy Leece, XCLUSIVE Tan and Sweet Avenue LLC (collectively "Leece defendants") filed a "response" to Coach's motion for partial summary judgment against the Samtan defendants, and a motion for leave to file a cross-motion for summary judgment. The Leece defendants have not sought

an extension of time for filing their dispositive motion. Coach filed a motion to strike the Leece defendants' "response," (Doc. 41), as Coach's motion for partial summary judgment addressed only its claims against the Petrusha defendants and did not address any of its claims against the Leece defendants, and the Leece defendants are using the "response" as a way to avoid the fact that they are time-barred from filing their own motion for summary judgment. The Leece defendants respond that Coach alleges trademark and copyright infringement claims against them, based in part, on a theory of successor or vicarious liability for the conduct of the Petrusha defendants. Coach also objects to the Leece defendants' motion to file a cross-motion for summary judgment on the grounds that it is time-barred by the court's scheduling order. (Doc. 40).

Although parties are expected to strictly adhere to the court's scheduling order, especially when, as here, the parties have stipulated to an extension of such, the court shall excuse the Leece defendants' dilatoriness here on the grounds that the delay is not so significant as to outweigh the desirability of potentially resolving issues by way of pre-trial motion. Accordingly, the court shall consider the Leece's defendants' late filed motion for leave to file a cross-motion for summary judgment, and shall consider the Leece defendants' response to Coach's motion for partial summary judgment. Thus, Coach's motion to strike the Leece defendants' response to its motion for partial summary judgment (Doc. 41) is DENIED, and the Leece defendants' motion to file a cross-motion for summary judgment (Doc. 37) is GRANTED. Coach shall file its response to the Leece defendants' motion for summary judgment on or before March 20, 2014. The Leece defendant shall file their reply on or before April 9, 2014. A hearing on the Leece defendants' motion for summary judgment shall be heard on April 17, 2014 at 9:30 a.m. The hearing on Coach's

motion for partial summary judgment (Doc. 33) shall be rescheduled and shall be heard on April 17, 2014 at 9:30 a.m.

IT IS SO ORDERED.

Dated: March 5, 2014

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on March 5, 2014, by electronic and/or ordinary mail and also on the following:

Troy Leece
30969 Five Mile
Livonia, MI 48154

Marc T Petrusha
4494 Dixie Highway
Waterford, MI 48329

Sweet Avenue, LLC
c/o Troy Leece
30969 Five Mile
Livonia, MI 48154

Xclusive Tan, LLC
c/o Troy Leece
30969 Five Mile
Livonia, MI 48154.

s/Barbara Radke
Deputy Clerk